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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of	)	
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Conditions Proposed by SBC Communications	)	
Inc. and Ameritech Corporation for Their	)	
Pending Application to Transfer Control	)	
	)	CC Docket No. 98-141
	)	
	)	

COMMENTS

OF AARP

July 19, 1999

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List A B C D E

601 E Street, NW Washington, DC 20049 (202) 434-2277 www.aarp.org
Joseph S. Perkins *President* Horace B. Deets *Executive Director*

AARP appreciates the opportunity to offer comment on conditions proposed by SBC Communications Inc. (SBC) and Ameritech in connection with their application to transfer licenses and authorizations. We are pleased that Chairman William E. Kennard communicated his concerns over potential public interest harm and questionable consumer benefits in his April 1, 1999 letter to the companies. We believe that the Chairman's inquiry, coupled with the published concerns of groups like AARP, has led to the development of the conditions being proposed by SBC and Ameritech.

AARP supports the existing role of the Federal Communications Commission (FCC) in reviewing mergers. We believe that providing the Department of Justice with sole authority to review mergers would discount the public interest. It is due to the careful review that the FCC has undertaken in the SBC/Ameritech merger that the proposed conditions we are commenting on even exist.

AARP is on record in opposition to the merger of SBC/Ameritech. We have expressed our opposition through activity in the Ameritech states and in the Reply Comments we filed with the FCC last November. Generally speaking, our concern over the merger of contiguous regional Bell Operating Companies (RBOCs) relates to the retardation of competition, resulting in higher rates and fewer telecommunications choices for residential consumers. We expressed similar concerns during the Commission's review of the Bell Atlantic/NYNEX merger in 1997.

Despite our overall opposition to the merger, however, AARP is pleased with many of the conditions proposed by SBC and Ameritech in their July 1, 1999 filing. While we do not envision the conditions as currently drafted making the merger palatable, they do provide consumers with the opportunity to benefit from the merger in the short run. We applaud the FCC for pursuing this form of resolution and the companies for responding. We now urge that if these proposed conditions are adopted, they be enforced.

A recently released report from AARP's Public Policy Institute (PPI) entitled "Promises and Realities: An Examination of the Post-Merger Performance of the SBC/Pacific Telesis and Bell Atlantic/NYNEX Companies" studies the post-merger behavior of those combined companies. The paper finds that not all of the pre-merger promises made by those companies have been kept. In addition to offering supporting data, the report makes a number of recommendations, among which is that the federal government "hold merging companies accountable for the promises made while seeking regulatory approval."[1] A copy of this report is attached for the record.

In addition to commenting on the importance of enforcing the merger order, AARP will offer commentary on how the proposed conditions will promote competition and improve residential phone service.

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[1] Promises and Realities: An Examination of the Post-Merger Performance of SBC/Pacific Telesis and Bell Atlantic/NYNEX Companies, Economics and Technology, Inc., AARP Public Policy Institute publication, 1999 at p. 10.

PROMOTING COMPETITION

Competition, or the lack of it, has been the issue at the crux of our opposition to the proposed merger of SBC and Ameritech. AARP has expressed its concern regarding the lack of competitive options in the local phone service market since the Telecommunications Act of 1996 was enacted. We have not been persuaded by the arguments of SBC and Ameritech that they have begun opening their existing markets to competition for residential consumers. In fact, the AARP report discloses that competition has been slow to develop in California following the merger of SBC-Pacific Telesis, despite assurances to the contrary. Therefore, we are not optimistic that, left to their own devices, these two potential rivals once merged will do anything to accelerate competition in local phone service.

AARP is encouraged, however, that some of the proposed conditions will place a premium on promoting competition. The bulk of the conditions relating to competition refer to in-region local phone service competition. The performance areas on which SBC-Ameritech has proposed placing conditions to promote in-region competition include the use of a "most favored nation" clause, discounted unbundled network elements and performance parity measures.

Though each of these performance areas is a necessary component in the development of competitive local exchange markets, AARP believes that getting the performance parity proposal right is of critical importance. In essence, performance parity means equal treatment for all competitors. Congress required it in the Telecommunications Act of 1996, and the Department of Justice and the Commission have insisted upon standards that measure this parity. SBC-Ameritech has agreed to implement twenty benchmark measures in all thirteen states in which the merged company will operate. This is a laudable commitment considering the stiff liquidated damage penalties the merged company faces for failure to meet the standards. However, one key element of performance that appears to be missing is independent testing of the operating support systems (OSS). Without proof of a functioning OSS, new entrants will be dissuaded, performance parity will not be reached and competition will not develop. AARP proposes conducting a comprehensive, independent, scientifically valid test of the OSS to show that the system works and to give competition a boost.

SBC-Ameritech has designs to spur out-of-region competition as well. The company's national-local strategy involves providing facilities-based local service in 30 new markets within 30 months. While the concept has existed since the announcement of the merger in 1998, the proposed conditions are likely to accelerate the process. The conditions require that the merged company offer service in Miami, Florida; Seattle, Washington; and Boston, Massachusetts within one year of the merger closing date, twelve more markets within the next six months and the final fifteen by the end of the 30 month period. Both SBC and Ameritech, in discussions with AARP staff, have expressed the belief that by virtue of SBC-Ameritech entering these various markets, other entrants will follow and full competition will develop. The companies further contend that, reciprocally, the incumbent local exchange carrier will choose to enter markets within the thirteen-state SBC-Ameritech territory, creating a synergy of competition throughout the country.

AARP has the same concerns today with the national-local strategy that we had when it was first introduced last year. While we appreciate the ambitious schedule, the conditions do not define what the mix of business versus residential lines should be. We would be naïve to believe that the motivation behind embracing these new markets is to enable the merged company to increase its percentage share of residential customers. Certainly, offering service to business in these new markets makes perfect sense. However, for true competition to develop in even one market, residential consumers must have choices in local exchange service as well. Therefore, AARP recommends that the FCC require SBC-Ameritech to reach a certain level of residential line penetration in the markets it chooses to enter, or risk facing penalties. The formula could be based on the relative number of business lines it plans to build out in a certain area. The Commission should order that SBC-Ameritech have at least one residential line subscriber for every two business lines. This would ensure that if the merged company were planning heavy penetration in an urban area, then a number of residential customers in that densely populated city would benefit as well.

IMPROVING RESIDENTIAL PHONE SERVICE

The aforementioned report of post-merger activity focuses a great deal on the issues of service quality and rates. For any consumer, whether commercial or residential, the quality and cost of service are central issues. AARP recognizes that much of the jurisdiction for addressing these issues lies within the state, and we have been active in proceedings in a number of the Ameritech states on behalf of our membership.

We are pleased that the FCC has chosen not to abdicate its limited authority in this area and we are generally pleased with the conditions proposed by SBC-Ameritech dealing with improving residential phone service. The promises made by SBC-Ameritech on the issues of low-income assistance, advanced services for underserved communities and the ban on monthly minimum long distance fees are all encouraging signs. However, AARP is concerned that compliance with the proposed conditions as drafted may not be sufficient to achieve SBC-Ameritech's stated goals.

The expansion of the Lifeline Universal Service Plan to all thirteen SBC-Ameritech states should make it much easier for low-income consumers to afford local phone service. Among the proposed conditions is a plan to adopt the Ohio Lifeline program as the model. Our only real concern with this condition is the fact that the Ohio program has been in flux. If the version of the Ohio program the companies would implement is the one that includes automatic enrollment, we would be very supportive. Automatic enrollment will substantially expand the Lifeline program and will make a tremendous difference in low-income communities. We strongly recommend that the Lifeline program SBC-Ameritech adopts be based on automatic enrollment.

The conditions referencing advanced telecommunications services such as xDSL lines are important as well. While other services may not seem as crucial as the dial tone, society today places increasing importance on access to advanced services linking consumers to the Internet and other telecommunications-related services. Therefore, SBC-Ameritech's inclusion of a proposed condition referencing deployment of xDSL lines to 10% of the new rural and urban wire centers that they choose to serve is to be commended. AARP is only cautiously optimistic that this promise will be fulfilled, however. As we understand the proposed conditions, xDSL service to the underserved would be offered after the merged company entered twenty wire centers in a state. Unfortunately, the merged company is only being *required* to enter ten wire centers in a state. Therefore, unless there are a great number of attractive wire centers in a particular state, the advanced services conditions will never have to be met.

AARP hopes that this was an unintended error. As a means to correct this oversight, we suggest that at least one rural or urban line center be required to be among the ten required wire centers. This would not only bring advanced services to the underserved, but it would increase the percentage of residential lines toward the goal we espoused earlier.

We heartily endorse the proposed condition specifying that SBC-Ameritech will not impose minimum monthly fees on long distance service for at least three years. This is a welcome recognition of a growing problem in the long-distance industry. Additionally, SBC-Ameritech has allayed our initial concerns by clarifying that the three-year period would not begin until <u>after</u> long distance service were offered in a particular state. AARP hopes that the rest of the long distance industry will follow SBC-Ameritech's lead and eliminate their respective minimum fees.

Finally, AARP suggests that the Commission amend the proposed conditions to require that a percentage of the merger savings be used by the merged company for a consumer education campaign. Among other things, such a campaign should focus on educating low-income consumers about Lifeline and the opportunities advanced services may afford them. Rural consumers should receive materials on advanced services as well and all consumers should be informed about the choices available to them in the new competitive market.

ENFORCING THE MERGER ORDER

Enforcement of the merger order is of paramount importance. SBC-Ameritech has done a credible job in the proposed conditions of outlining compliance reviews and defining compliance programs. AARP is confident that these compliance provisions will make it more likely that the merged company will adhere to the promises made. Additionally, the remunerative penalties that face the merged company for non-compliance are substantial.

However, absent rigorous enforcement, the results the FCC envisions for the merged company will not be achieved. AARP urges the Commission in the strongest possible terms to enforce the order and the conditions within, if adopted. Recognizing that the Commission has resource limitations, we recommend that the FCC seek the support of the respective states in this effort. The Telecommunications Act of 1996 envisioned state involvement in the enforcement process and we suggest that the Commission make that expressly known to the states. AARP believes that clarifying the states' authority to bring claims for non-compliance to the Commission on an expedited basis would strengthen its ability to enforce the merger order.

CONCLUSION

The Federal Communications Commission is to be commended for engaging SBC and Ameritech in discussions regarding the proposed merger's benefits to residential consumers. Our concerns regarding the impact this merger would have on consumers have led AARP to oppose the merger to date. The conditions proposed by SBC-Ameritech, however, address many of the problem areas that we have identified. We hope that if the merger is approved, the Commission will incorporate the suggestions we have made regarding the conditions. Conditions that are clearly understandable to all interested parties benefit everyone.

In conclusion, we repeat that the adoption of conditions, however strong, will not in and of itself make this merger work for residential consumers. As the AARP study makes clear, state and federal regulators must fully execute their oversight responsibilities in telecommunications mergers. Once tough performance standards have been put in place, the merged firm's activities must be carefully monitored and the Commission must be prepared to take strong enforcement action if the standards are not met. Anything less would be a disservice to all consumers.

If you have any questions, please feel free to contact Jeff Kramer of the Federal Affairs staff, at 202/434-3800.

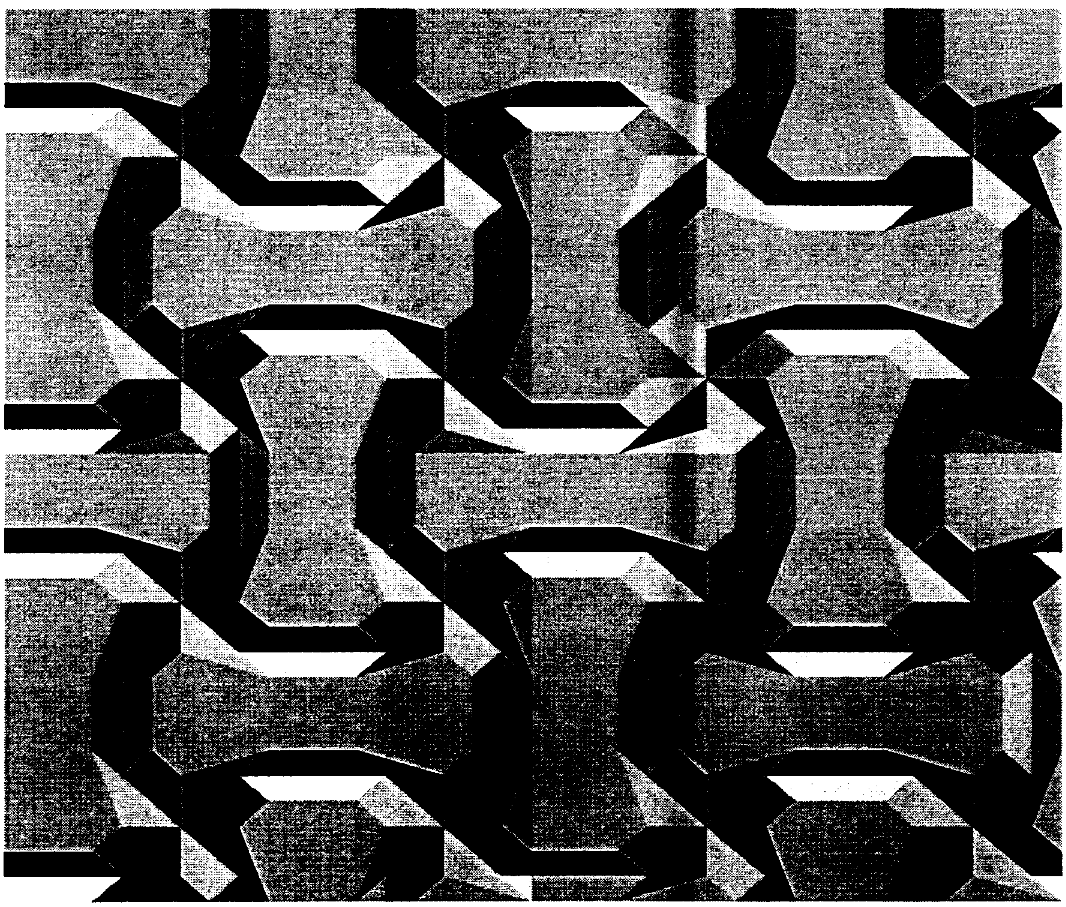
Sincerely,

Martin Corry

Martin A. Corry
Director
Federal Affairs

Promises and Realities

An examination of the post-merger performance of the SBC/Pacific Telesis and Bell Atlantic/NYNEX companies



AARP

A Publication of the Public Policy Institute

Promises and Realities: An Examination of the Post-Merger Performance of the SBC/PACIFIC Telesis and Bell Atlantic/NYNEX Companies

by
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The Public Policy Institute, formed in 1985, is part of the Research Group in the AARP. One of the missions of the Institute is to foster research and analysis on public policy issues of interest to older Americans. This publication represents part of that effort. Any views expressed in this publication are for information, debate, and discussion, and do not neccessarily represent formal policies of AARP.

ACKNOWLEDGEMENTS

Many people contributed to the production of this report. Thomas L. Welch, Chairman of the Maine Public Utilities Commission, Bob Rowe, Commissioner at the Montana Public Service Commission, Dr. Mark Cooper, Research Director at the Consumer Federation of America, and Sandra B. Eskin, Esquire, provided valuable critiques of the report.

The opinions expressed in this report are those of the authors. However, many thanks are due to Lee L. Selywn and Susan Baldwin of ETI for their helpful suggestions during the review process, and to Sonia N. Jorge for her careful research analysis.

At AARP, Susan Weinstock and Jeff Kramer deserve special thanks for their thoughtful review comments and advice as does Ann McLarty Jackson for formatting the report and designing the cover.

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FOREWORD

Not long after the passage of major federal telecommunications legislation in 1996, two merger proposals were announced within weeks of each other: SBC Communications would merge with Pacific Telesis, and Bell Atlantic would merge with NYNEX. In each case, the merger candidates promised that consumers would realize a variety of benefits as a result of the transaction, including improved service quality, the opportunity to choose a different service provider, and lower telephone prices. Each candidate also agreed to comply with various requirements imposed by their respective regulators as a condition of approval. Both mergers were approved in 1997.

This report by Economics and Technology, Inc. (ETI), a research and consulting firm in Boston, provides a preliminary analysis of how well each of the two merged companies have kept the promises that they made to the public and met the conditions that they agreed to with regulators. More specifically, the report focuses on the commitments made by each merged entity with regard to service quality, price levels, and the development of local competition.

This report's findings are particularly pertinent considering that the SBC/Pacific Telesis and Bell Atlantic/NYNEX mergers likely represent the beginning of a consolidation trend in the telecommunications industry. This trend could reduce the number of large local companies (the seven regional Bell operating companies and GTE) from eight in 1996 to four if the two currently pending mergers (SBC with Ameritech and Bell Atlantic with GTE) are approved later this year. The information in this report should help policymakers and advocates assess the degree to which the completed mergers are, in fact, in the public interest and whether regulatory action is necessary to counteract any negative impacts of these mergers. The report should also enable policymakers and advocates to improve their assessment of the potential impact of the proposed mergers currently under review.

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EXECUTIVE SUMMARY

Background

The federal Telecommunications Act of 1996 committed the U.S. to a telecommunications policy direction in which competitive forces are ultimately expected to supplant regulation of incumbent local carriers' local services, including their retail price levels and service quality. An important element of this arrangement was the 14-point competitive checklist, a list of conditions that the regional Bell operating companies (RBOCs) must satisfy in order to be allowed to provide long-distance service to its local customers. In adopting the checklist, Congress sought to ensure that real competition for local telephone service existed or would develop without hindrance before the RBOCs were allowed to enter the long-distance market. Proponents of the act envisioned that it would lead to an open, fully competitive telecommunications marketplace where companies would provide consumers with better service quality, more choices, and lower prices.

The extent to which this vision may materialize depends on numerous and varied factors. One such factor, the mergers and consolidations occurring in the telecommunications industry, can have major effects on the prices, the service quality, and the level of competition available to consumers.

The first RBOC mergers raised significant concerns with regard to their impact on consumers and competition. To deal with these concerns, federal and state regulators, in approving the acquisition in 1997 of Pacific Telesis, parent company of Pacific Bell and Nevada Bell, by SBC and the merger of Bell Atlantic with NYNEX, included a number of conditions to ensure that each transaction served the public interest. Regulators are currently reviewing two mergers that present similar issues, the proposed mergers of SBC and Ameritech and of Bell Atlantic with GTE.

Purpose and Methodology

This study examines the impact of one specific type of merger, RBOC mergers, on consumers and on the development of local competition. Focusing on the issues of price levels, service quality, and market-opening initiatives, the study explores how well SBC/Pacific Telesis and Bell Atlantic/NYNEX have thus far fulfilled the promises and commitments they made during the regulatory review process, including their level of compliance with any specific requirements that may have been imposed by regulators as conditions for merger approval. Given the short interval in which the SBC/Pacific Telesis and Bell Atlantic/NYNEX mergers have been in effect, it is likely that the full impacts of the mergers, whether good or bad, have not yet materialized. Nevertheless, this preliminary analysis provides some empirical data and may help to identify important issues bearing on the regulatory reviews of other pending and future merger proposals.

In focusing on price, service quality, and competition, this report does not examine other changes or improvements that mergers might bring—such as new products and services, and benefits to shareholders. Nor is it possible to determine if price, service quality, or competition would have been better or worse without these mergers. Instead, the paper reviews what has happened in the two years since the mergers occurred and whether the promises made in applying for the mergers, and the conditions accepted when approval was granted, have been met.

This study is based on the analysis of publicly accessible information obtained in the course of ETI's participation in several of the state and federal regulatory proceedings that have addressed the mergers. Other sources of information and analysis include reports by financial analysts, RBOC reports to shareholders, FCC reports and industry data, petitions filed by consumer advocate organizations.

Principal Findings

The Federal Communications Commission (FCC) and several state regulatory commissions conducted proceedings to review the potential benefits and risks of the proposed SBC/Pacific Telesis and Bell Atlantic/NYNEX mergers. As the merger approval decisions of the FCC and state regulatory commissions' merger approval decisions show, these regulators perceived risks that the merged companies might do the following:

- Frustrate the further growth of competition in their local service territories;
- Fail to lower prices, thus blocking "flow-through" of merger-driven cost savings to consumers; and
- Cut back on service quality and/or network investments, particularly in areas such as rural communities in which competition may develop most slowly.

Although findings regarding these risks are necessarily preliminary, they do indicate some of the shorter-term successes and problems these first mergers have had to date.

Local competition. In seeking regulatory approval of their respective mergers, SBC and Bell Atlantic promised to open their markets to local competition. The FCC also directed Bell Atlantic/NYNEX to undertake nine local market-opening actions. Thus far, Bell Atlantic has fulfilled some of its commitments. Some of the other market-opening actions, however, have proven to be ineffective and/or impractical to enforce. Overall, in spite of the promises made by the RBOCs to open their local markets to competition and the application of the FCC's nine market-opening actions, local competition is not noticeably more advanced in the former NYNEX regions compared to other parts of the country. In California, local telephone service competition is also developing slowly. The California Public Utility Commission (CPUC) concluded this is due in part to shortcomings in Pacific Bell's efforts to accommodate new market entrants. In the two years that have passed since the Bell Atlantic/NYNEX and SBC/Pacific Telesis mergers were approved, growth in local competition has continued at a slower than anticipated pace, and the vast majority of SBC and Bell Atlantic's basic telephone customers still have no viable service choices.

Price levels. Both SBC/Pacific Telesis and Bell Atlantic/NYNEX have achieved and even surpassed their targets for merger-driven cost savings, but only a small portion of these benefits has "flowed through" to consumers in the form of lower prices for basic telephone service. Bell Atlantic's merger was not subjected to any specific flow-through requirements; in addition, Bell Atlantic has not reduced basic service rates other than as required by its pre-existing price regulation plans. While Pacific Bell has been complying with the CPUC's schedule of mandated rate reductions, its actual cost savings are considerably higher than the company's earlier projections. In addition, Pacific Bell has pushed for higher rates and changes to the regulatory framework that had required them to share revenues exceeding a benchmark rate-of-return with ratepayers.

Service quality. Pacific Bell's service quality has declined on several basic measures since 1995, including number of customer complaints and average waiting times for repairs and new service orders. The former NYNEX region has shown marked improvement on some service quality measures since the merger with Bell Atlantic, including a significant decrease in the number of customer complaints. Other measures, however, show no improvement and even some degradation in service quality. The largest performance improvements have occurred in those states in the former NYNEX region in which the Public Utility Commissions (PUCs) have established aggressive service quality monitoring and enforcement programs. This suggests that such programs can be an effective regulatory tool to ensure that an incumbent local exchange carrier's (ILEC) management continues to focus on service quality issues after a merger has occurred.

Conclusion

The circumstances surrounding the Bell Atlantic/NYNEX merger are, in many ways, different and independent of the circumstances surrounding the SBC/Pacific Telesis merger. The performance of the two merged entities also has differed in many respects. In general, however, several conclusions can be drawn with regard to how well the merged companies have thus far fulfilled the promises and commitments they made during the regulatory review process. The overall conclusion of this report is that, despite various attempts by the state PUCs and federal regulators to protect public interest during the review process, consumers to date have received little tangible benefit from the SBC/Pacific Telesis or Bell Atlantic/NYNEX mergers.

It is, of course, too late to "undo" the completed mergers. However, there are still opportunities for regulators to better protect consumers from the three risks that regulators identified in approving the SBC/Pacific Telesis and Bell Atlantic/NYNEX transactions, both with respect to those two mergers and during the ongoing reviews of the proposed Bell Atlantic/GTE and SBC/Ameritech mergers. Our recommendations are that regulators do the following:

- Quantify more precisely the full extent of merger-related cost savings and efficiency improvements, and adjust the productivity assumptions contained in the firms' incentive regulation plans to ensure that those savings are passed through to basic local service customers.

- Continue to carefully monitor the firms' service quality, and be prepared to take assertive actions, including possible imposition of financial penalties, to encourage the firms to comply with the mandated quality standards.

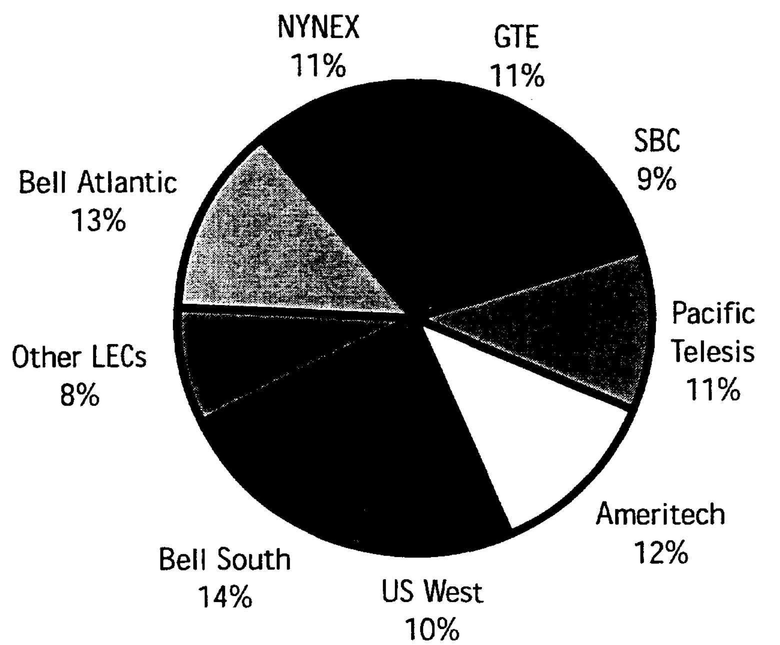
- Consider extending the more effective of the local market-opening initiatives that the FCC adopted for Bell Atlantic to the SBC/Pacific Telesis merger, as well as to any subsequent RBOC mergers that receive approval.

- Use the Telecommunications Act's 14-point checklist for local competition as a benchmark for approving RBOC mergers.

- Devise ways at the state and the federal level to hold merging companies accountable for the promises made while seeking regulatory approval.

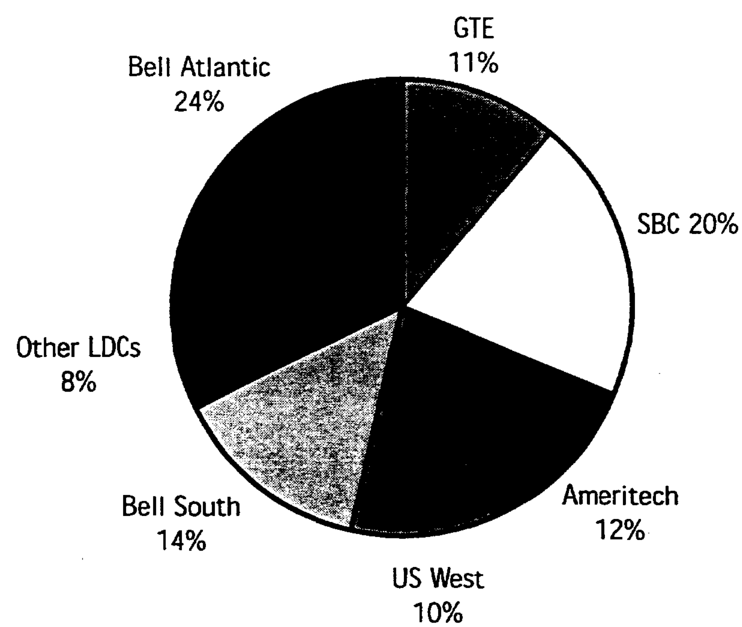
The final conclusion of the report, however, is that even the best-constructed regulatory conditions are unlikely to defuse the potential anticompetitive and anticonsumer impacts of mergers between RBOCs. The only way to ensure that consumers actually share in any benefits of an RBOC merger including more choices, improved service quality, and lower prices, is for regulators to approve only those RBOC mergers for which effective competition exists throughout the combined region.

Figure 1. Pre SBC/Pacific Telesis and Bell Atlantic/NYNEX Mergers: Access Line Shares (1996).



Source: Statistics of Common Carriers, Table 2.10, 1996.

Figure 2. Post SBC/Pacific Telesis and Bell Atlantic/NYNEX Mergers: Access Line Shares (1997).



Source: Statistics of Common Carriers, Table 2.10, 1997

INTRODUCTION

Background

Three years ago, the U.S. Congress passed the landmark Telecommunications Act of 1996 and launched what was intended to be a new era for the telecommunications services industry. The federal act, together with parallel efforts occurring at the state level, replaced the long-standing franchise monopoly model for the supply of local telephone services with a vision of an open, fully competitive marketplace. In essence, the act created a quid pro quo arrangement in which, in exchange for retooling their networks and business practices to allow new competitors to enter the local market, the regional Bell operating companies (RBOCs - see Appendix A for a glossary of acronyms) would be permitted to compete in the lucrative market for interLATA toll service (i.e., long distance), as well as in the equipment manufacturing and information services markets.

A key element of this arrangement was the 14-point competitive checklist, a list of conditions that the RBOCs must satisfy in order to provide long-distance service to their local customers. In developing this list, Congress sought to ensure that real competition for local telephone service existed or would develop without hindrance before the RBOCs were allowed to enter the long-distance market. Proponents of the act envisioned that within a few years the separate markets for local, toll, video, and enhanced telecommunications services would be a single market, hotly contested by the RBOCs, the traditional long distance carriers, and cable television companies, resulting in more choices, higher quality of service, and lower prices for American consumers.

The extent to which this vision may materialize depends on numerous and varied factors. One such factor, mergers and consolidations, has had profound effects on the telecommunications industry, especially with respect to issues of the prices, the service quality, and the level of competition available to consumers since the passage of the 1996 Telecommunications Act.

On April 1, 1996, SBC Communications, Inc. (SBC) announced plans to acquire Pacific Telesis, parent company of Pacific Bell and Nevada Bell; federal and state regulators granted approval, with conditions, in March 1997, and the transaction was completed a few days later. On April 22, 1996, Bell Atlantic and NYNEX announced plans to merge, and they received all required state and FCC approvals (again, with certain conditions applied) by August 1997. In January 1998, SBC announced that it would acquire the incumbent local exchange carrier (ILEC) serving Connecticut, Southern New England Telephone company (SNET), and had satisfied all regulatory hurdles by October of that year. The effects of the mergers that have been approved to date are shown graphically in Figures 1 and 2.

More recently, in May 1998, SBC announced plans to merge with Ameritech, and two months later, Bell Atlantic indicated its intention to merge with GTE (often considered the "eighth RBOC"). Both of the latter mergers are currently pending, but if allowed to go forward, the number of large incumbent local exchange carriers (ILECs) will have been cut from the eight that existed in 1996 to only four, with the two largest firms controlling some 74 percent of all local service access lines in the US.[1]

These RBOC mergers have raised a number of concerns with some regulators and other telecommunications industry stakeholders, including consumer groups and potential new competitors. While the merging companies have relied upon promises of future benefits from the mergers to gain regulatory approval, other industry participants and some regulators have called into question the potential impact of RBOC consolidation on such fundamental issues as the rate levels, service quality, and, perhaps most important in the long run, the further development of competition in the local and toll services markets.

Purpose and Methodology of Study

This study is intended to examine the effects of one specific type of merger, RBOC mergers, upon these three fundamental consumer issues in light of conditions established by regulators to protect the public interest and promises made by the RBOCs that future benefits would result from the mergers. This study focuses upon the impact of the SBC/Pacific Telesis and Bell Atlantic/NYNEX mergers, which were the first to receive FCC and state approval. In addition, it provides recommendations for consumer safeguards that regulators should consider before the currently pending mergers (SBC/Ameritech and Bell Atlantic/GTE) are allowed to go into effect.

While it is important to begin gauging the impact of these mergers, it must be noted that the relatively short time period since they each took effect is not nearly sufficient for their full impact, whether good or bad, to develop and be felt by consumers.

1 Based on 1997 data reported in the FCC Statistics of Common Carriers, out of approximately 150 million total access lines, a merged SBC/Ameritech would control some 53 million lines (35 percent) and a merged Bell Atlantic/GTE would control 57.7 million lines (39 percent).

Indeed, it could be many years before the full outcome of these mergers, both individually and collectively, is known and understood. For example, benefits to consumers resulting from the merging firms' ability to fully integrate their internal processes and adopt "best practices" so as to realize the cost savings and synergies may take more than two or three years to develop. Disadvantages to consumers, such as potential price increases, may also develop later, or indeed, even be postponed if the companies hope to win regulatory approval for subsequent mergers. Even though too little time has elapsed to evaluate fully the first two major RBOC mergers, it is valuable to review the evidence that is now available. This initial review can identify shortcomings in previous merger approvals as well as issues that should be addressed in pending merger review proceedings.

In focusing on price, service quality, and competition, this paper does not examine other changes or improvements that mergers might bring—such as new products or services and benefits to shareholders, among other things. The paper also does not claim that problems with these three consumer issues would not have occurred or would have been worse or better without the mergers; the paper only looks at what has happened in the two years since the mergers occurred and whether the promises made in applying for the mergers, and the conditions accepted when approval was granted, have been met.

This study is based upon the analysis of publicly accessible information obtained in the course of ETI's participation in several of the state and federal merger-related regulatory proceedings. Other sources of information and analysis include reports by financial analysts, RBOC reports to shareholders, FCC reports and industry data, and information from the consumer perspective in petitions filed by consumer advocate organizations.

II. Regulatory Reviews Of The RBOC Mergers

Varying Regulatory Standards

Before the SBC/Pacific Telesis and Bell Atlantic/NYNEX mergers were consummated, they were reviewed by the FCC and the state PUCs with jurisdiction over the areas served by the RBOC being acquired. In all, nine such regulatory investigations took place, including two at the FCC[2] and in California, Maine, Massachusetts, Nevada, New Hampshire, New York, and Vermont.[3] Since no "change of control" was involved, regulatory approvals typically were not required in jurisdictions served by the acquiring RBOC (i.e., the pre-merger SBC and Bell Atlantic states).[4] The general role of the investigations that were undertaken was to ensure that the mergers would be in the public interest. However, each review was governed by the regulators' interpretations of their specific statutory obligations for ILEC merger reviews, which varied by jurisdiction and circumstance.

For example, the FCC was obligated to ensure that "the public interest, convenience and necessity will be served" by the transfer of control.[5] During its review of the SBC/Pacific Telesis merger, the FCC interpreted this requirement narrowly, focusing solely on the merger's potential negative impacts on competition, and concluded that "[a] demonstration that benefits will arise from the transfer is not, however, a prerequisite to our approval, provided that no foreseeable adverse consequences [to competition] will result from the transfer."[6]

[2]FCC File No. NSD-L-96-10, Memorandum Opinion and Order, released August 14, 1997 (FCC BA/NYNEX Merger Decision); FCC Report No. LB-96-32, Memorandum Opinion and Order, released January 31, 1997 (FCC SBC/Pacific Telesis Merger Decision).

[3]California PUC, Docket A.96-04-038, Decision 97-03-067, March 31, 1997 (CPUC SBC/Pacific Telesis Merger Decision); Maine PUC, Docket No. 96-388, Order (Part II), February 6, 1997 (Maine PUC BA/NYNEX Merger Decision); Massachusetts DPU, Docket No. 96-78, Decision, January 23, 1997 (Mass. DPU BA/NYNEX Merger Decision); Nevada PSC, Docket Nos. 95-3003 et al,. Decision, August 15, 1996 (Nevada PSC SBC/Pacific Telesis Merger Decision); New Hampshire PUC, DR 96-220, Order No. 22,484, January 20, 1997 (NHPUC BA/NYNEX Merger Decision); New York PSC, Cases 96-C-0603 and 96-C-0599, Order Approving Proposed Merger Subject to Conditions, March 21, 1997 (NYPSC BA/NYNEX Merger Decision); Vermont PSB, Docket 5900, Decision, February 26, 1997 (Vermont PSB BA/NYNEX Merger Decision). The PUC of Rhode Island did not undertake a substantive merger review proceeding.

[4]The New Jersey Board of Public Utilities reviewed the Bell Atlantic/NYNEX merger in the context of its ongoing evaluation of NYNEX's "Opportunity New Jersey" (ONJ) incentive regulation plan. The Board took steps to monitor the impacts of the merger on the company's fulfillment of its ONJ commitments but did not impose new conditions. See New Jersey BPU, Docket TM96070504, Slip Opinion, May 22, 1997, at p.11. The pre-merger SBC states were Texas, Oklahoma, Kansas, Missouri, and Arkansas, to which were added the Pacific Telesis states of California and Nevada. The pre-merger Bell Atlantic states were Delaware, Maryland, New Jersey, Pennsylvania, Virginia, West Virginia, and the District of Columbia, to which were added the NYNEX states of Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont.

[5]47 U.S.C. Section 310 (d).

[6]FCC SBC/Pacific Telesis Merger Decision, at para. 2.

Eight months later, when addressing the Bell Atlantic/NYNEX merger, the FCC adopted a more aggressive interpretation of its mandate, finding that "[a]pplicants bear the burden of demonstrating that the proposed transaction is in the public interest," and defining the public interest in terms of the "broad aims of the Communications Act" of 1996, including not only the advancement of competition, but also universal service goals and the deployment of advanced telecommunications technologies and services.[7] The result was that the FCC imposed several specific conditions upon the Bell Atlantic/NYNEX merger (which are detailed in a later section of this chapter), whereas it granted unconditional approval to the SBC/Pacific Telesis acquisition.

Regulatory investigations at the state level varied in scope and focus depending upon state laws. The California PUC investigation of the SBC/Pacific Telesis merger was guided by more specific California statutes that required the PUC to evaluate the proposed merger's impact in seven areas (including the resulting utility's financial health and service quality, as well as the effects upon state and local economies), and to ensure that ratepayers receive no less than 50 percent of the total forecasted economic benefits of the merger.[8] In contrast, the Maine PUC needed only to conclude that the merger between Bell Atlantic and NYNEX was "consistent with the interests of the utility's ratepayers and investors," and the New Hampshire PUC determined that its legal standard was that the merger cause "no net harm."[9] In New York, the PSC was required to follow only general statutory requirements for a review of any agreement affecting a utility's franchise or stock. The PSC also concluded, however, that the merger was reviewable because of its impacts upon NYNEX's incentive regulation plan in New York.[10] These differences in state review standards influenced the particular regulatory conditions attached to each PUC's merger approval, which we will describe later in this chapter.

Nonetheless, it is significant that, with the exception of the FCC's original investigation of the SBC/Pacific Telesis merger, virtually every regulatory approval of a merger in which one or more RBOCs has been involved has imposed conditions intended to reduce the potential for outcomes

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[7]FCC BA/NYNEX Merger Decision, at para. 2.

[8]CPUC SBC/Pacific Telesis Merger Decision, at 8-9, citing California Public Utilities Code, Section 854.

[9]Maine PUC BA/NYNEX Merger Decision, at 7, citing Maine 35-A M.R.S.A. Section 708; NHPUC BA/NYNEX Merger Decision at section II.A, citing Eastern Utility Associates, 96 NHPUC 236 (241), 1991.

[10]NYPSC BA/NYNEX Merger Decision, at 2-3, citing NY Public Service Law Sections 99-100, and the NYNEX Performance Regulatory Plan, para. VIII.A.5.

contrary to the public interest.[11] In the next section, we highlight the regulators' concerns about the mergers' potential impact on consumers and the development of local competition We then consider the specific safeguards and monitoring requirements established by regulators.

Regulators' Concerns about the Mergers' Potential Impact on Consumers and the Development of Local Competition

The regulatory reviews of the SBC/Pacific Telesis and Bell Atlantic/NYNEX mergers recognized that RBOC mergers posed a number of potential outcomes that would not be in the public interest. During the course of these review proceedings, parties critical of the mergers filed a wealth of expert testimony and evidence concerning these risks, which were vigorously challenged by the merger applicants. As a general matter, the major stakeholders relevant to an RBOC merger include the shareholders of each RBOC, the customers in each RBOCs' service territory, the companies' employees and associated unions, existing and potential competitors, and the citizens in each community and state served by the RBOCs, inasmuch as the supply of telecommunications services affects those areas' economic health.

Given that the SBC and Bell Atlantic mergers were driven primarily by long-term strategic aims and were viewed positively by shareholders (as demonstrated by the sustained rise in share prices occurring after each merger announcement),[12] assessments of the risks to the companies' customers and the advancement of competition were particularly prominent in the review proceedings. The regulatory reviews did not identify and address those risks in a uniform manner, in part because the reviews were conducted according to different standards, as discussed above.
In general, however, regulators determined that the mergers created three principal risks to consumers and local competition.

1) The mergers may retard the further growth of competition in the merged firms' local service markets.

Regulators identified two distinct means by which the SBC and Bell Atlantic mergers might impair the further development of local competition. First, the mergers might eliminate any prospects for competition between the now-merged RBOCs, i.e., SBC and Pacific Telesis no longer

11 One exception is the Mass. DPU that declined to impose any specific conditions in its merger approval decision; see Mass. DPU BA/NYNEX Merger Decision.

12 During the period April 1996 through February 1999, the share prices (adjusted for stock splits) of SBC and Bell Atlantic have risen by 127 percent and 95 percent, respectively, compared to an 89 percent rise in the S&P 500 index over that same period. See http://chart.yahoo.com/d for "SBC" (SBC Communications), "BEL (Bell Atlantic)", and "SPC" (Standard and Poor 500 Index), respectively, for that period.

would be potential rivals who might have eventually competed in each other's markets or in areas outside of both of their service territories, and the same holds true for Bell Atlantic and NYNEX. Second, the merged firms might have greater incentives to block competitive entry into their local markets. For example, the FCC considered whether "[a]nother likely harmful effect of mergers of major incumbent LECs is to increase their ability and incentive to resist the procompetitive process."[13] This could occur either because it would be easier for the fewer remaining major ILECs to coordinate their actions to resist competition (the FCC's primary concern in this area), or because the merged firms such as SBC/Pacific Telesis, which intended to pursue an expensive, full-service strategy, would have stronger incentives to use the revenue streams from their less-competitive services to finance those strategies.

The petitioning companies attempted to respond to these concerns. Both SBC and Bell Atlantic contended that they were not potential competitors in the service territories that they proposed to acquire.[14] The ILEC economist testifying in support of the Bell Atlantic/NYNEX merger in Maine stated that the merger would in fact "enhance competition" in the state.[15] Moreover, Pacific Bell's CEO attempted to reassure the California PUC that "[t]he merger will have no effect on Pacific Bell's policy of support for opening all telecommunications markets in California to competition."[16]

The risks to competitive development were a major focus of the FCC's merger reviews, and also were addressed in the California merger review proceeding. The FCC ultimately concluded that the SBC/Pacific Telesis merger would not diminish potential inter-RBOC competition, and that

[13]California PUC Docket A.96-04-038, Direct Testimony of Dr. Richard Gilbert, July 3, 1996, at 7-9; Maine PUC Docket 96-388, Direct Testimony of William E. Taylor, September 6, 1996, at 11-13.

[14]Ibid., at 3-4.

[15]California PUC Docket A.96-04-038, Direct Testimony of David W. Dorman, July 3, 1996 at 14.

[16]FCC SBC/Pacific Telesis Merger Decision, at paras. 28 and 38.

the FCC's ongoing efforts to open up local exchange markets to competition addressed the potential for anticompetitive conduct.[17] The California PUC also declined to take action in these areas.[18] However, in its review of the Bell Atlantic/NYNEX merger, the FCC found that the merger was likely to have important anticompetitive effects, unless specific remedies were imposed. First, the FCC concluded that the merger would in fact eliminate Bell Atlantic as a competitor to NYNEX and would thus retard competition.[19] The FCC went on to explain in the following statement how the increased market power of the merged companies would run contrary to the goal of increasing competition:

> Based on the evidence in the record and our analysis of competitive market conditions, we find the proposed merger of Bell Atlantic and NYNEX is likely to have two predictable effects. First, we conclude that the merger is likely to strengthen NYNEX's market power against erosion from competition and to increase the likelihood that one or more of the most significant market participants may unilaterally exercise market power. Second, we conclude that the merger increases the likelihood of coordinated interaction among the most significant remaining market participants to increase (or not reduce) prices, reduce quality, or restrict output.
>
> We further conclude that, although this remains a regulated market environment, the possible increase in market power remains an important concern. Such increased market power would be fundamentally inconsistent with the primary policy goal of the 1996 Act – the development of competition in, and deregulation of, telecommunications markets.[20]

In response to this perceived risk, the FCC specified certain market-opening initiatives as conditions to approval of the Bell Atlantic/NYNEX merger.

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[17] FCC SBC/Pacific Telesis Merger Decision, at paras. 28 and 38.

[18] CPUC SBC/Pacific Telesis Merger Decision, at 54 and 91.

[19] FCC BA/NYNEX Merger Decision, at 43. The FCC observed that Bell Atlantic had planned to enter certain NYNEX local service markets, including the New York metropolitan area, and halted those plans when merger discussions commenced. Ibid., at para. 44.

[20] Ibid., at paras. 144-145.

2) The merged companies may fail to pass along billions of dollars of merger-driven cost savings to customers of their noncompetitive local telephone services.

Some state regulatory commissions were concerned that competitive pressures might not be sufficient to force the merged RBOCs to pass those savings along to their local telephone customers. As expressed by the California PUC: "...[we] do not believe, as [Pacific Bell witness] Dr. Gordon claims, that services on which Pacific has market power are such at [sic] a competitive level either at this time or in the immediately foreseeable future (as determined for this purpose in this case) that a 'flow-through' of savings from these services will be realized due to competition to satisfy the requirements of §854."[21] The New York Public Service Commission anticipated somewhat more optimistically that emerging competition would create incentives to flow through the cost savings resulting from the Bell Atlantic/NYNEX merger, but also concluded that several measures (described below) should be adopted to ensure that consumers received those benefits.[22]

SBC and Bell Atlantic promised that their respective mergers ultimately would produce cost savings in excess of a billion dollars per year, through corporate restructuring, elimination of redundant operations, and adoption of "best practices." Bell Atlantic and NYNEX estimated their merger cost savings would approach $1 billion per year within three years of the merger, and characterized these savings as "hard, real, and certain."[23] Pacific told the California PUC that its merger with SBC would produce cost savings of $366 million between 1998 and 2003.[24] Like all ILECs, these companies generate the great majority of their revenues from basic local telephone service.[25] Consequently, most of the merger-related cost savings relate to the provision of basic local services and should be expected to flow back to local customers.[26]

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[21] CPUC SBC/Pacific Telesis Merger Decision, at 20-21. As noted in footnote 8 above, section 854 is the California statute that requires that at least 50 percent of any merger benefits are allocated to ratepayers.

[22] NYSPC BA/NYNEX Merger Decision, at 4.

[23] See FCC BA/NYNEX Merger Decision, at paras. 160-163.

[24] CPUC SBC/Pacific Telesis Merger Decision, at 21. See also the discussion in Chapter 3 of this report.

[25] For example, 74 percent of Bell Atlantic's 1997 revenues were generated by its local telephone operations, an additional 8 percent from its directory publishing activities which are an outgrowth of its local telephone operations, and only 18 percent from other services. Source: Bell Atlantic 1997 Annual Report.

[26] Nearly all of SBC's and Bell Atlantic's post-merger local telephone operations are subject to price regulation in which basic telephone rates are either frozen, capped, or indexed to inflation. Consequently, these companies generally would not undertake basic service rate reductions or increases, other than those already required by the governing price regulation plan, that is, unrelated to the merger. However, this does not mean that an RBOC would be prohibited from initiating a rate reduction; no commission would reject an RBOC proposal to lower basic rates as a means to pass along cost savings from a merger.

During the PUC merger reviews, the petitioning RBOCs argued that competition had developed enough to ensure that their cost savings would flow through to consumers without any direct regulatory mandate to do so. For example, SBC and Pacific Telesis contended that "...market forces will assure that a substantial portion of economic benefits flow through to consumers," and also promised that their merger's "procompetitive effects will generate benefits to consumers which are far larger than any estimates of cost savings from the merger."[27]

One factor bearing on SBC/Pacific Bell's ability to deliver cost-savings and pass them through to consumers is the large premium, relative to the pre-announcement market value of the acquired firm, that SBC paid for its acquisition of Pacific Telesis. Just prior to the SBC/Pacific Telesis merger announcement, Pacific Telesis stock was trading at $27.75 per share.[28] At the time of the merger announcement (April 1, 1996), SBC was willing to pay $38.56 per share, a premium of 32 percent.[29] Expressed in terms of total capitalization (given that Pacific Telesis had 428.4 million shares outstanding), SBC was willing to pay a premium of $3.8 billion over the pre-announcement total value for Pacific Telesis of $11.9 billion. This high premium reveals the strategic value that the RBOCs place upon other RBOCs' dominant market positions and longstanding customer relationships. It also raises the question of how SBC expects to recoup that premium, generate new profits for shareholders, and also pass cost savings on to customers.

3) The merged companies may cut back on service quality and/or network investments, particularly in areas such as rural communities in which competition may develop most slowly.

The New York PSC stated at the time of the merger review that "[t]he quality of service offered by New York Telephone has been a source of consistent concern to us," and observed that the company had failed to meet service quality targets during the first year of its incentive regulation plan.[30] Similarly, the California PUC was dissatisfied with Pacific

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[27]California PUC Docket A.96-04-038, Direct Testimony of Lewis J. Perl (adopted by Kenneth Gordon), July 3, 1996, Exhibit 2, at 3.

[28] This was Pacific Telesis' closing stock price on Friday, March 29, 1996. CPUC Docket A.96-04-038, SBC and Pacific Telesis Merger and Plan of Agreement, Article IX, section 9.13, at 30.

[29]Ibid. Under the merger agreement, Pacific Telesis shares would be exchanged for SBC shares at a ratio of 0.733:1. SBC's post-announcement closing price on Monday, April 1, 1996 was $49.88, producing a per-share value for Pacific Telesis shares of $36.56 (i.e., 49.88 x 0.733 = 36.56).

[30]New York Telephone is the local telephone company serving New York state, formerly a unit of NYNEX and now a unit of Bell Atlantic.

Bell's pre-merger service quality and found that some aspects of the firm's service quality had declined since the adoption of revised procedures in 1994.[31]

Moreover, several state regulatory commissions concluded during their merger reviews that service quality could be at even greater risk after the mergers were approved, in part because the merged companies would be likely to focus their resources on new markets and services. The New York PSC indicated that "[w]e are concerned that, in pursuing the goals for which this merger is designed, management may fail to focus sufficiently on service improvement in New York, or make the timely commitments of investment in infrastructure and resources that are necessary for that improvement to occur."[32] The Maine PUC stated that "[w]e are concerned, however, about possible deterioration of the reliability, survivability, and quality of the services offered by NYNEX after the merger," and specifically noted that Bell Atlantic might choose to concentrate its investment in areas other than Maine.[33] The California PUC also addressed service quality in its SBC/Pacific Telesis merger review and found it necessary to impose specific service quality requirements (detailed later in this chapter) as conditions to its merger approval.[34]

In response to such concerns, the petitioning companies promised improvements in service quality. The Chairman, President, and CEO of Pacific Bell testified that "[t]he merger will benefit our customers by maintaining and enhancing our service standards."[35] Similarly, NYNEX's Vice President for Maine operations identified the merged companies' ability to "...maintain and improve quality of service and to develop and bring to market more quickly new services based on new technologies" as an important benefit of the Bell Atlantic/NYNEX merger.[36] NYNEX also claimed that the merger would improve service quality in Massachusetts.[37]

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31 NYPSC BA/NYNEX Merger Decision at 4-533

32 Maine PUC BA/NYNEX Merger Decision at 19-20.

33 CPUC SBC/Pacific Telesis Merger Decision, at 74.

34 CPUC SBC/Pacific Telesis Merger Decision, at 74.

35 California PUC Docket A.96-04-038, Direct Testimony of David W. Dorman, July 3, 1996, at 12.

36 Maine PUC Docket 96-388, Direct Testimony of Edward V. Dinan, September 6, 1996, at 5.

37 Mass. DPU BA/NYNEX Merger Decision, at 3 (citing NYNEX Reply Comments).

Specific Safeguards and Monitoring Requirements Established by Regulators

As explained above, regulators recognized the consumer-related risks posed by the SBC/Pacific Telesis and Bell Atlantic/NYNEX mergers to varying degrees in the course of their merger review proceedings. While some regulators found the evidence inconclusive or adopted "wait and see" policies emphasizing monitoring of potential problem areas, on other occasions regulators adopted specific safeguards intended to reduce the mergers' potential harms to ratepayers and the further progress of local competition. This section details the safeguards and monitoring requirements that were adopted by those regulators granting approval to the mergers.

Conditions Applied to the SBC/Pacific Telesis Merger

As we observed earlier in this chapter, the FCC placed no conditions on the approval of the SBC/Pacific Telesis merger. In contrast, the California PUC imposed a number of conditions on Pacific Bell in its merger approval decision.

Flow-through of merger benefits to consumers. The California PUC determined that 50 percent of the forecasted economic benefits of the SBC/Pacific Telesis merger should be flowed through to ratepayers directly in the form of rate reductions, to comply with the minimum flow-through requirement set by California law.[38] After considering widely varying estimates of those total economic benefits,[39] the CPUC determined that the ratepayer share equated to $248 million on a net present-value basis and thus ordered the merged company to make annual rate reductions ranging from $47 million to $69 million during each of the first five years following the acquisition.[40]

Service quality. The California PUC found that Pacific Bell was out of compliance with existing service quality standards for response to customer trouble report calls and ordered the merged company to meet those standards for at least the next five years. The PUC also declared that it would impose penalties on Pacific Bell if the company's service representative performance did not meet applicable standards within two months.[41]

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[38]Ibid. at 21 and 25-26.CPUC SBC/Pacific Telesis Merger Decision, at 38.

[39] Pacific Bell estimated the total merger cost savings accruing to Pacific's regulated operations to be $366 million ($248 million on a net present value basis), limited to the years 1998-2003. Consumer advocates estimated those cost savings to be approximately $2 billion, based on 10- to 20- year time horizons.

[40]Ibid., at 38-39 and Table 1.

[41]Ibid., at 74-75.

Additional commitments. The PUC accepted Pacific Bell's commitment to spend an additional $34 million (net present value) on charitable contributions, support for an under-served community "think-tank," and funding of a Community Technology Fund and a Universal Service Task Force.[42]

The Nevada PSC accepted a negotiated agreement between SBC/Pacific Telesis and other parties that established certain merger-related commitments, but in the context of a new alternative regulation plan.[43] The new plan created a schedule for network modernization projects in Nevada, tightened service quality standards, and committed the company to flow through to Nevada ratepayers either $4 million or two percent of the flow-through amount determined by the CPUC, whichever was higher.[44]

Conditions Applied to the Bell Atlantic/NYNEX Merger

When approving the Bell Atlantic/NYNEX merger subject to conditions, the New York PSC specifically addressed consumer advocates' concerns that the merger would not produce any tangible benefits for basic telephone service customers in the state. As a result, the PSC not only set goals for performance improvements, it also linked the merger and the resulting efficiencies to the Company's Performance-based Incentive Regulatory Plan (PRP). The New York PSC set conditions for approval that addressed the following items:

Flow-through of merger benefits to consumers. To ensure that benefits are passed on to consumers, the PSC adopted "... standards for the review of requests for recovery or deferral of any costs, including exogenous costs, cost onsets related to the opening of competitive markets, and revenue losses directly due to access charge reductions." In doing so, the PSC will consider "... whether the company's conduct has promoted the development of competition within the state; whether consumers have benefited from competition, including price reductions greater than contained in the PRP; and whether consumers have shared in the cost savings resulting from the merger."[45]

Service Quality. Because NYNEX had failed to meet existing service quality requirements, the PSC directed the company to submit a plan to ensure the ongoing improvement of service quality in New York. This

[42] Ibid., at 39 and Table 1.

[43] See Nevada PSC SBC/Pacific Telesis Decision, at Exhibit 1 ("Stipulation").

[44] Ibid. at 11.

[45] NYPSC BA/NYNEX Merger Decision, at 6-8.

plan was to describe in detail the Company's commitment to increase infrastructure investment by $1 billion over five years and the intention to hire 750 to 1,000 new employees by the end of 1997 to address service quality problems.[46]

Additional requirements. The PSC required that the merged Company's "... existing major New York Telephone and NYNEX functions shall not relocate outside of New York State."[47] Furthermore, the PSC required that the merged company commit to providing "timely, unimpeded and convenient access to all books and records necessary to the conduct of the Commission's regulatory responsibilities."[48] Finally, the PSC extended its existing rules governing NYNEX affiliate transactions to encompass transactions with any and all Bell Atlantic affiliates which affect its New York local telephone operations.[49]

The Maine PUC focused upon the promotion of service quality and local competition in its original merger review decision. The specific conditions that it imposed pursuant to merger approval were as follows:

Service quality. The Maine PUC ordered Bell Atlantic to maintain NYNEX's historic levels of network investment in the state, after concluding that "we remain concerned that incentives exist for the merged company to delay, defer, or reduce such investment in Maine."[50]

Promotion of local competition. The PUC ordered Bell Atlantic to meet the 14-point "competitive checklist" requirement set forth at Section 271 of the federal Telecommunications Act by September 30, 1997, in order to "mitigate any possible negative effect that the merger may have on the emergence of local competition in Maine."[51] However, after Bell Atlantic had failed to meet the September 1997 deadline, the PUC simply rescinded that requirement, and has instead monitored the company's progress towards satisfying the checklist without imposing any further deadlines or sanctions.[52]

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[46]Ibid., at 4-5.
[47]Ibid., at 4.
[48]Ibid., at 8.
[49]Ibid., at 8.
[50]Maine PUC BA/NYNEX Merger Decision, at 21.
[51]Ibid., at 17.
[52]Maine PUC, Docket 96-388, Order, September 30, 1997.

The Vermont Public Service Board (PSB) also imposed several conditions before approving the Bell Atlantic/NYNEX merger. The Board agreed in principle that merger-related cost savings should be passed on to ratepayers but deferred any action to do so to an appropriate forum in a future proceeding, such as a cost-of-service case or an alternative regulation proceeding.[53] In addition, the Board ordered the merged company to meet the same service quality and competitive checklist obligations applied by the Maine PUC (see above).[54] The Board also put the company on notice that "...[w]e anticipate that NET [the company] will maintain an overall service quality that is high and that is comparable to that provided in other Bell Atlantic jurisdictions, including those with considerably greater population density."[55]

The FCC, in its order approving the Bell Atlantic/NYNEX merger, focused upon the merger's impact on competition and established nine specific regulatory conditions intended to eliminate entry barriers and to encourage the growth of local competition in the merged companies' region.[56] These conditions – which were based on actions that Bell Atlantic initially proposed to undertake to secure merger approval – can be summarized as follows:

- Submit regular Performance Monitoring Reports (PMR) detailing the company's performance in the ordering, provisioning, and maintenance of resold services, unbundled elements, and interconnection trunks;

- Accept specifications for the establishment and testing of uniform interfaces for carriers to gain access to Bell Atlantic/NYNEX operations support systems;

- Offer alternative arrangements to reduce the up-front costs (by incorporating the costs into recurring charges or by allowing nonrecurring charges to be paid over a number of months) that competitors would face when obtaining wholesale services and Unbundled Network Elements (UNEs) from the company; and

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[53] Ibid. at 25.

[54] Vermont PSB BA/NYNEX Decision, at 25 and 23, respectively. The Board also required Bell Atlantic to implement intraLATA toll presubscription by December 1, 1997 "or as soon thereafter as possible." Ibid. at 24. Presubscription increases competitive choice by allowing customers to place intraLATA (shorter-distance) toll calls using a competitive carrier on a direct "1+" basis without having to input an access code.

[55] Ibid. at 27.

[56] FCC BA/NYNEX Merger Decision, at Appendix C ("Conditions").

- Ensure, when it proposes rates for interconnection, transport, and termination, or unbundled network elements, that such rates are based upon the forward-looking, economic cost to provide those items.

The FCC also gave notice that its conditional approval of the Bell Atlantic/NYNEX merger did not imply that such concessions would necessarily remedy regulators' concerns with other mergers that may be proposed in the future and warned future ILEC merger candidates that:

It is quite plausible that there will be some mergers of actual or precluded competitors that will present such significant potential harms to competition that there will be no means to conclude that the transaction serves the public interest, convenience and necessity. The elimination of an even more significant market participant than Bell Atlantic would raise even greater competitive concerns.[57]

As the FCC observed, each approved RBOC merger has far-reaching consequences for the structure of the local telecommunications marketplace. Moreover, merger approval is, for all practical purposes, irreversible once it has occurred. For those reasons, it is particularly important to examine the conduct of SBC and Bell Atlantic after their respective mergers were conditionally approved.

The remainder of this paper reviews, to the extent possible given current data, the degree to which the RBOCs have fulfilled their promises and met the conditions under which their respective mergers were approved.

57Bell Atlantic/NYNEX Merger Decision, at para. 179.